

**ORIGINAL**

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

BEFORE THE HONORABLE JACQUELINE CORLEY, MAGISTRATE JUDGE

UNITED STATES OF AMERICA,	)	
	)	PAGES 1 - 42
PLAINTIFF,	)	
	)	
VS.	)	NO. C 13-00764WHO
	)	
LUPE MERCADO,	)	
	)	
DEFENDANT.	)	OAKLAND, CALIFORNIA
_____	)	TUESDAY, DECEMBER 3, 2013

**TRANSCRIPT OF ELECTRONICALLY RECORDED PROCEEDINGS**

APPEARANCES:

FOR PLAINTIFF:	MELINDA L. HAAG, ESQ.
	UNITED STATES ATTORNEY
	450 GOLDEN GATE AVENUE
	SAN FRANCISCO, CALIFORNIA 94102
BY:	WILLIAM FRENTZEN,
	DAMALI A. TAYLOR,
	ASSISTANT UNITED STATES ATTORNEYS

FOR DEFENDANT:	LAW OFFICE OF TONY TAMBURELLO
	214 DUBOCE AVENUE
	SAN FRANCISCO, CALIFORNIA 94103
BY:	TONY TAMBURELLO, ATTORNEY AT LAW
	MOHAMMAD A. HAMOUDI, ATTORNEY AT LAW
	1000 BRANNAN STREET, SUITE 400
	SAN FRANCISCO, CALIFORNIA 94103

TRANSCRIBED BY: RAYNEE H. MERCADO

PROCEEDINGS RECORDED BY ELECTRONIC RECORDING DEVICE;  
TRANSCRIPT PRODUCED BY COMPUTER-AIDED TRANSCRIPTION.

1 TUESDAY, DECEMBER 3, 2013

9:27 A.M.

2 ELECTRONICALLY RECORDED PROCEEDINGS

3 **MR. FRENTZEN:** GOOD MORNING, YOUR HONOR. WILLIAM  
4 FRENTZEN AND DAMALI TAYLOR FOR THE GOVERNMENT.

5 **THE COURT:** GOOD MORNING.

6 **MR. TAMBURELLO:** GOOD MORNING, YOUR HONOR. TONY  
7 TAMBURELLO AND MR. MOHAMMAD HAMUDI FOR MS. LUPE MERCADO.

8 **THE COURT:** GOOD MORNING.

9 GOOD MORNING, MS. MERCADO.

10 **THE DEFENDANT:** GOOD MORNING.

11 **THE COURT:** FIRST, MR. TAMBURELLO, DO YOU HAVE A COPY  
12 OF THE FINANCIAL AFFIDAVIT?

13 **MR. TAMBURELLO:** I'M HAVING HER SIGN IT.

14 **THE COURT:** ALL RIGHT. THANK YOU.

15 (PAUSE IN THE PROCEEDINGS.)

16 **THE COURT:** ALL RIGHT. MS. MERCADO, I'VE REVIEWED  
17 THE AFFIDAVIT YOU SIGNED UNDER PENALTY OF PERJURY. I FIND YOU  
18 QUALIFY FOR APPOINTMENT OF COUNSEL, SO MR. TAMBURELLO, WHO HAS  
19 BEEN REPRESENTING YOU FOR THE PAST YEAR AND A HALF, WILL  
20 CONTINUE TO REPRESENT YOU. HE IS NOW YOUR ATTORNEY IN THIS  
21 CASE FOR ALL PURPOSES.

22 **THE DEFENDANT:** THANK YOU.

23 **THE COURT:** ALL RIGHT.

24 HAVE THE PARTIES HAD THE OPPORTUNITY TO REVIEW THE  
25 PRETRIAL REPORT?

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1                   **MR. TAMBURELLO:** YES, I JUST REVIEWED IT, YOUR HONOR.

2                   **MR. FRENTZEN:** YES, YOUR HONOR.

3                   **THE COURT:** ALL RIGHT. WHO WANTS TO GO FIRST?

4                   **MR. FRENTZEN:** WELL, YOUR HONOR, I'M AT THE COURT'S  
5 PLEASURE. IT'S A PRESUMPTION CASE. WE HEARD A LOT FROM  
6 MR. TAMBURELLO LAST TIME WE WERE HERE. I'M PREPARED TO  
7 ADDRESS SOME OF THAT. I THINK I'M PREPARED TO ADDRESS  
8 EVERYTHING ELSE. I'M HAPPY TO GO FIRST, OR IF  
9 MR. TAMBURELLO WANTS TO GO FIRST -- I'M AT THE COURT'S --  
10 COURT'S PLEASURE.

11                   **MR. TAMBURELLO:** OF COURSE, YOUR HONOR, I'M HAPPY TO  
12 GO FIRST ALSO. SO I THINK GIVEN THE REPORT YOU MIGHT WANT TO  
13 HEAR FROM ME, I GUESS.

14                   **THE COURT:** I DO. I THINK IN LIGHT OF THE REPORT,  
15 I'LL HEAR FROM MR. TAMBURELLO FIRST. AND THEN, MR. FRENTZEN,  
16 YOU CAN RESPOND. AND WE HAVE TIME. THE PARTIES CAN TAKE AS  
17 MUCH TIME AS THEY LIKE THIS MORNING.

18                   **MR. TAMBURELLO:** ALL RIGHT. ALL RIGHT.

19                   SO THE REPORT -- THE REPORT DOES -- I SHOULD POINT OUT IT  
20 DOES TALK ABOUT ONE OF THE CONSIDERATIONS OF VIOLENCE. I'LL  
21 GO RIGHT TO THAT. IT WAS A BATTERY THAT WAS A DETENTION ON  
22 5/4/2009. THERE'S NO PROOF SHE POURED SOFT DRINKS (SIC) --  
23 GENERALLY SPEAKING, IF IT'S A DETENTION ONLY, THAT'S WHAT IT  
24 MEANS. THERE'S NO CHARGES. AND IT REALLY DOESN'T HAVE ANY --  
25 I THINK IT'S NOT RELEVANT BECAUSE IT'S NOT REAL. THAT'S --

1 THAT'S NUMBER ONE.

2 **THE COURT:** I GUESS THE MORE SIGNIFICANT MATTER WOULD  
3 BE THE MATTER OF THE LOS ANGELES....

4 **MR. TAMBURELLO:** RIGHT. AND I -- I WILL GO TO THAT  
5 IN A SECOND.

6 FIRST, I WOULD LIKE TO SAY, JUST SO -- SO THAT MY CLIENT  
7 UNDERSTANDS THIS AS WELL. I KNOW THE COURT IS AWARE OF IT,  
8 BUT COUNTS ONE AND TWO, CRIMES OF VIOLENCE, AND THAT IT'S A  
9 PRESUMPTION. WE -- WE CONCEDE THAT.

10 AND OUR COURTS HAVE RULED THAT AN INDICTMENT IS SUFFICIENT  
11 TO ESTABLISH PROBABLE CAUSE UNDER 3142. WE -- WE KNOW THAT,  
12 TOO. YET WE KNOW THAT INDICTMENT IS SIMPLY AN ACCUSATION. IT  
13 IS A CHARGING DOCUMENT. AND AT THIS STAGE, THAT'S ALL IT IS.

14 3142(J) REMINDS US THAT NOTHING IN SECTION 3142 SHOULD BE  
15 CONSTRUED AS MODIFYING OR LIMITING A PRESUMPTION OF INNOCENCE,  
16 AND I THINK THAT'S IMPORTANT. I THINK A LOT OF TIMES WE  
17 FORGET THAT.

18 THE GOVERNMENT'S RELIANCE ON THE SERIOUSNESS OF THE CHARGE  
19 ALONE IS MISPLACED BECAUSE IN THE VICAR MURDER CASE OF U.S.  
20 VS. EISCHEID, E-I-S-C-H-E-I-D, 315 FEDERAL SUPPLEMENT 2D 1033,  
21 THERE WAS A PRETRIAL RELEASE ORDER IN THAT CASE. IT WAS A  
22 VICAR MURDER. IT'S NOT LIKE THERE'S -- IT'S IMPOSSIBLE, AND  
23 SO JUST BECAUSE THERE IS A CHARGE OF VICAR MURDER DOES NOT  
24 MEAN THAT THIS COURT SHOULD THROW ITS HAND UP IN THE AIR AND  
25 NOT DO ANYTHING.

1 LET'S LOOK AT THE INDICTMENT. IT'S VAGUE AND CONCLUSORY.  
2 IT DEFINES A RACKETEERING ENTERPRISE AND PROCLAIMS THAT  
3 CENTRAL DIVISION (SIC) -- DIVISADERO PLAYAS, AKA CDP, IS A  
4 VIOLENT STREET GANG, WHOSE MEMBERS WEAR GANG TATTOOS AND ARE  
5 KNOWN BY GANG MONIKERS.

6 MS. MERCADO HAS NO GANG TATTOOS. MS. MERCADO HAS NO  
7 MERCA-- MONIKERS. SHE IS LUPE MERCADO. SHE IS THE MOTHER  
8 OF FOUR CHILDREN AND HAS BEEN IN A RELATIONSHIP WITH BARRY  
9 GILTON FOR OVER 20 YEARS.

10 THEY'RE USING THAT PARTICULAR ASPECT BECAUSE I KNOW,  
11 ACCORDING TO THE REPORT AND ACCORDING TO AGENT MILLSPAUGH,  
12 THEY KNOW SHE'S NOT A GANG MEMBER. BUT THEY SAY SHE'S AN  
13 ASSOCIATE BECAUSE SHE'S MARRIED TO BARRY GILTON.

14 THERE ARE A LOT OF PEOPLE WHO SAY BARRY GILTON'S NOT A  
15 GANG MEMBER EITHER. HE IS -- HE'S A WORKER. HE'S BEEN A MUNI  
16 DRIVER FOR A LONG TIME, AND SO IT'S -- IT'S REALLY -- GUILT BY  
17 ASSOCIATION. IT'S THE WORST KIND OF -- KIND OF -- KIND OF --  
18 KIND OF THEORY THAT I THINK WE CAN HAVE.

19 BUT THE MOST REVEALING ASPECT, YOUR HONOR, OF THE  
20 INDICTMENT, THE MOST REVEALING ASPECT IS COUNT FOUR BECAUSE  
21 IT -- IT'S A VIEW OF WHAT THE GOVERNMENT REALLY BELIEVES THE  
22 CASE IS. AND THAT IS -- AND YOU -- YOU KNOW, MAYBE -- MAYBE I  
23 DON'T HAVE THE PERSPECTIVE OF THIS COURT. BUT FROM MY  
24 PERSPECTIVE, WHENEVER THERE'S A CHARGE OF A RICO CASE WITH A  
25 VICAR MURDER, THEY DON'T CHARGE ACCESSORY AFTER THE FACT.

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1 THE DEFENDANT IS CHARGED AS A PRINCIPAL AIDER AND ABETTOR,  
2 NOT AN ACCESSORY AFTER THE FACT. I SUBMIT THAT BY DEFINITION,  
3 AN ACCESSORY AFTER THE FACT IS A CHARGE THAT IS ONE THAT SHOWS  
4 THAT HER INVOLVEMENT, ACCORDING TO THE GOVERNMENT, THAT  
5 OCCURRED AFTER THE VIOLENT ACT OF JUNE 4TH 2012.

6 SO IN OTHER WORDS, SHE'S NOT REALLY AN AIDER AND ABETTOR  
7 AND A PRINCIPAL. THEY'RE SAYING SHE'S A (SIC) ACCESSORY AFTER  
8 THE FACT. I -- I THINK THAT THAT'S IMPORTANT, 'CAUSE I THINK  
9 THAT'S WHAT THEIR THEORY IS.

10 SHE UNDERSTANDS THE SERIOUSNESS OF THE CRIMES CHARGED.  
11 THROUGH HER WHOLE LIFE, SHE HAS NEVER DEMONSTRATED A  
12 PROPENSITY FOR VIOLENCE. THE COURT IS AWARE THAT THE NINTH  
13 CIRCUIT SAID PRETRIAL RELEASE SHOULD BE DENIED ONLY IN RARE  
14 CIRCUMSTANCES, AND DOUBTS REGARDING THE PROPRIETY OF RELEASE  
15 SHOULD BE RESOLVED IN FAVOR OF THE DEFENDANT.

16 AT THE TIME OF HER ARREST ON JUNE 9TH, SHE HAS -- JUNE  
17 9TH, 2012, SHE HAS BEEN IN CUSTODY SINCE THAT TIME. THE  
18 PROBLEM WAS THAT THE BAIL THAT WAS SET BY THE STATE COURT WAS  
19 SUCH THAT THERE'S NO WAY THAT ANYBODY CAN MAKE BOND. THEY  
20 TYPICALLY SET BAILS 1, 2, \$3 MILLION. THEY'RE JUST -- IT'S  
21 JUST NOT SOMETHING THAT MS. MERCADO CAN DO.

22 HERE, WE HAVE A DIFFERENT SITUATION. THE FEDERAL LAW SAYS  
23 THAT PRETRIAL RELEASE SHOULD BE THE RULE RATHER THAN THE  
24 EXCEPTION. WE HAVE THE PRESUMPTIONS, BUT SHE HAS NO VIOLENCE  
25 IN HER PAST. THERE WERE NO GUNS OR WEAPONS FOUND DURING THE

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1 SEARCH OF THE HOUSE. SHE WAS NOT PRESENT AT THE SCENE OF THE  
2 SHOOTING ON JUNE 4TH, 2012, AND -- AND THE GOVERNMENT KNOWS  
3 THAT. SHE DID NOT POSSESS OR SHOOT A GUN ON JUNE 4TH, AND THE  
4 GOVERNMENT KNOWS THAT. SHE DID NOT EVEN KNOW THE PERSON WHO  
5 WAS SHOT CALVIN SNEED, NEVER MET HIM, DIDN'T EVEN KNOW WHAT HE  
6 LOOKS LIKE.

7 I CAN ONLY SAY --

8 **THE COURT:** HOW -- HOW MIGHT -- HOW MIGHT --  
9 WHERE'S THE -- THEN WE GO BACK TO THE LOS ANGELES INCIDENT AS  
10 WELL, 'CAUSE THAT SEEMS TO AT LEAST CONTRADICT WHAT IS IN THE  
11 REPORT WITH RESPECT TO WHAT HAPPENED IN LOS ANGELES.

12 **MR. TAMBURELLO:** RIGHT. AND THAT'S -- AND THAT'S --  
13 AND THAT'S THE WEIGHT OF THE EVIDENCE ARGUMENT, AND THAT'S  
14 WHERE I'M HEADED FOR.

15 **THE COURT:** OKAY.

16 **MR. TAMBURELLO:** THE LOS ANGELES INCIDENT. CALVIN  
17 SNEED WAS A NUTTY BLOCC CRIP. HE WAS A GANG MEMBER. HE WAS A  
18 PIMP. HE DID ALL KINDS OF ILLEGAL ACTIVITIES. THERE CAME A  
19 POINT PRIOR TO JANUARY OF 2011 WHERE CALVIN SNEED WAS INVOLVED  
20 IN A SHOOTOUT WHERE THERE WAS A MURDER. CALVIN SNEED THEN  
21 TURNS STATES EVIDENCE AND PROVIDED EVIDENCE AGAINST HIS FELLOW  
22 NUTTY BLOCC CRIP MEMBER.

23 FROM THAT DATE ONWARD, AND FROM THE TESTIMONY, A GREEN  
24 LIGHT WENT OUT ON HIM. NOW, I'M ASSUMING THE COURT  
25 UNDERSTANDS WHAT A GREEN LIGHT IS.

1           **THE COURT:**   YES.

2           **MR. TAMBURELLO:**   THAT GREEN LIGHT RESULTED IN HIS  
3   BEING SHOT ON JANUARY OF 2011 AND SHOT OTHER TIMES.   THE  
4   AUTOPSY REVEALED NOT ONLY THE WOUNDS FROM 2011, BUT BULLETS --  
5   THEY'RE CALLED BULLETS -- THAT WERE STILL IN HIS BODY, ONE OF  
6   THEM WRAPPED IN A PIECE OF UNITED STATES CURRENCY.   HE HAD  
7   SHOTS IN HIS LEGS.   HE HAD SHOTS IN HIS ARMS.   HE WAS SHOT UP  
8   A NUMBER OF TIMES.   HE IS (SIC) A TOTAL TARGET IN LOS ANGELES.

9           AND I SAY THAT BECAUSE THERE ARE OTHER PEOPLE WHO HAD  
10   MOTIVES TO SHOOT HIM ON MAY 27TH, 2012.   AND EVERYBODY'S  
11   IGNORING THAT.   AND IT SHOULD NOT BE IGNORED.

12           FURTHERMORE, MS. MERCADO, IN HER INTERVIEW WITH THE POLICE  
13   IN SAN FRANCISCO, CLEARLY -- CLEARLY TOLD THEM THAT SHE WENT  
14   DOWN TO LOS ANGELES ON MAY 25TH TO TALK WITH HER DAUGHTER  
15   BECAUSE SHE SUSPECTED THAT HER DAUGHTER WAS INVOLVED IN  
16   PROSTITUTION, AND SHE WAS HEART BROKEN AND UPSET, AND SHE  
17   WANTED HER TO COME HOME.   SHE SAID THAT SHE WAS THERE.

18           GUESS WHAT?   BARRY GILTON, THE ONE SHE HAS THE  
19   RELATIONSHIP AND HER FOUR CHILDREN WITH, WAS NOT THERE.   HE  
20   WAS NOT THERE.

21           THERE ARE PEOPLE IN THIS AUDIENCE, HER FAMILY, WHO KNOWS  
22   (SIC) SHE WENT DOWN THERE FOR THAT PURPOSE.   AND ULTIMATELY,  
23   SHE STAYED DOWN THERE, BUT WAS UNABLE TO CONVINCE LETICIA TO  
24   COME BACK HOME.

25           BARRY GILTON DID GO DOWN ON THE MORNING OF MAY 27TH,

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1 UNBEKNOWNST TO LUPE MERCADO, AND SHOWED UP THERE AND WAS GOING  
2 TO ASK HER TO COME BACK.

3 SO HER RESPONSE DURING THE -- DURING THE QUESTIONING WAS  
4 THAT, "DID YOU GO DOWN TO LOS ANGELES WITH BARRY GILTON?"

5 SHE SAID NO. AND THAT'S TRUE. SHE DID NOT.

6 THE THEORY THAT THEY SHOT AT MR. SNEED ON MAY 27TH IS SO  
7 BOGUS THAT IT WOULD MAKE ANYBODY'S HEAD TURN THAT THEY'RE  
8 SAYING THAT. AT THE PRELIMINARY HEARING THAT TOOK PLACE IN  
9 SAN FRANCISCO, SERGEANT ANTHONY KELLER OF THE GANG TASK FORCE  
10 IN NORTH HOLLYWOOD TESTIFIED AS FOLLOWS. I'LL GIVE YOU A  
11 SUMMARY.

12 THERE ARE NO EYEWITNESSES THAT SAW THE SHOOTER. NO ONE  
13 SAW LUPE MERCADO IN POSSESSION OF A GUN OR BARRY GILTON IN  
14 POSSESSION OF A GUN. NOBODY -- NO ONE AT ALL CAN TESTIFY THAT  
15 THEY WERE EVEN THERE AT THE SCENE. MORE IMPORTANTLY -- MORE  
16 IMPORTANTLY, THE ONLY EYEWITNESS TO THAT EVENT SAID THAT THEY  
17 SAW A MAN WHO WAS DESCRIBED WITH THE CLOTHING AND BEING ON THE  
18 SURVEILLANCE CAMERA GOING INTO A PARTICULAR DOOR THAT EVERYONE  
19 CONCLUDED AT THE TIME OF THE PRELIMINARY HEARING WAS CALVIN  
20 SNEED. AND THAT WITNESS SAID HE HAD A GUN IN HIS HAND.

21 THAT IS THE SUM TOTAL OF THEIR EVIDENCE ABOUT THE SHOOTING  
22 ON MAY 27TH.

23 THE POLICE IN LOS ANGELES HAVE NEVER IMPLICATED LUPE  
24 MERCADO, NEVER EVEN SAID SHE WAS A SUSPECT.

25 WHY IS IT BEING SAID TODAY THAT THEY WENT DOWN THERE?

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1 I WILL PREEMPT MR. FRENTZEN'S PRESENTATION AND PROFFER.  
2 IT'S BASED UPON AN INDIVIDUAL WHO HAS -- KNOWN AS RON JONES  
3 WHO HAPPENS TO BE A PERSON THAT'S MARRIED TO BARRY GILTON'S  
4 SISTER. HE HAS BEEN DIAGNOSED AS BIPOLAR AND SCHIZOPHRENIC.  
5 AND AT THE TIME -- AND AT THE TIME OF THE PRELIMINARY HEARING,  
6 HE WAS NOT ONLY REVEALED TO BE THE INFORMANT THAT MR. -- AGENT  
7 MILLSPAUGH SEEMS TO BE RELYING ON BUT THAT HE WAS UNABLE TO  
8 TESTIFY UNTIL WELL AFTER THE PRELIMINARY HEARING WOULD HAVE  
9 BEEN CONCLUDED BECAUSE OF HIS MEDICAL AND MENTAL CONDITIONS.

10 FURTHERMORE, MAGISTRATE JUDGE BRUCE CHAN MADE A FINDING  
11 THAT HE WAS NOT GOING TO GIVE ANY WEIGHT WHATSOEVER TO THE  
12 STATEMENTS OF RON JONES WHATSOEVER BECAUSE WITH RESPECT TO THE  
13 MAY 27TH --

14 **THE COURT:** WHAT PROCEEDING WAS THAT?

15 **MR. TAMBURELLO:** THAT'S THE PRELIMINARY HEARING.

16 **THE COURT:** IN -- IN --

17 **MR. TAMBURELLO:** SAN FRANCISCO.

18 **THE COURT:** IN SAN FRANCISCO.

19 **MR. TAMBURELLO:** YES.

20 **THE COURT:** THEY HAVE MAGISTRATE JUDGES?

21 **MR. TAMBURELLO:** YES. WELL, I CALL  
22 THEM MAGISTRATE --

23 **THE COURT:** YOU MEAN --

24 (SIMULTANEOUS COLLOQUY.)

25 **MR. TAMBURELLO:** THE SUPERIOR COURT JUDGES.

1           **THE COURT:**   ALL RIGHT.   THAT'S WHAT I WAS --

2                               (SIMULTANEOUS COLLOQUY.)

3           **MR. TAMBURELLO:**   -- MAGISTRATES FOR THE  
4   PRELIMINARY --

5           **THE COURT:**   -- FOR THE PRELIMINARY HEARING.   THE  
6   JUDGE -- THE SUPERIOR COURT JUDGE PRESIDING OVER THE  
7   PRELIMINARY HEARING.

8           **MR. TAMBURELLO:**   RIGHT.   EXACTLY.

9           AND THE REASON FOR ALL THAT IS THAT RON JONES ADMITTED  
10   THAT THIS INFORMATION WAS NOT ANYTHING BUT -- OTHER THAN --  
11   NOT ONLY HEARSAY BUT DOUBLE HEARSAY AND RUMOR.   AND HE HAD A  
12   GRUDGE AGAINST LUPE MERCADO BECAUSE SHE HAD DISRESPECTED HIM  
13   IN PREVIOUS ENCOUNTERS.   HE'S A PIECE OF WORK.   AND IF THE  
14   GOVERNMENT IS RELYING ON THAT, THAT'S A SAD STATE OF AFFAIRS,  
15   I HAVE TO SAY.

16           AND DO WE HAVE -- DO WE HAVE WHERE THE MAGISTRATE SAID  
17   THAT OR --

18                               (OFF-THE-RECORD DISCUSSION.)

19                               (PAUSE IN THE PROCEEDINGS.)

20           **MR. TAMBURELLO:**   MAY I PASS THIS UP?

21           **THE COURT:**   SURE.

22           **MR. TAMBURELLO:**   AND THIS IS A LETTER, YOUR HONOR,  
23   THAT WAS WRITTEN BY -- WELL, IT'S NOT A LETTER.   IT'S AN EMAIL  
24   BUT -- THEY DON'T HAVE LETTERS ANYMORE.   THIS IS BY HARRY  
25   DORFMAN, WHO WAS THE PROSECUTING ATTORNEY, WHO IS NOW JUDGE

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1 DORFMAN. AND EXPLAINING WHY RON JONES IS NOT ABLE TO TESTIFY.

2 **THE COURT:** RIGHT, BUT YOU HAD THE PRELIMINARY  
3 HEARING AND THE JUDGE FOUND PROBABLE CAUSE TO GO FORWARD ON  
4 THE MURDER CHARGE.

5 **MR. TAMBURELLO:** HE DID.

6 **THE COURT:** RIGHT. SO -- SO -- AND THIS IS -- THIS  
7 IS A DETENTION HEARING.

8 **MR. TAMBURELLO:** CORRECT.

9 **THE COURT:** SO IT IS TRUE THAT THE MAY INCIDENT WAS  
10 BROUGHT UP AS -- AS A REASON FOR -- SO IS YOUR ARGUMENT, THEN,  
11 THERE'S NO -- THERE -- ACTUALLY OTHER THAN THE CHARGES IN THIS  
12 CASE, IN WHICH THERE'S PROBABLE CAUSE IN LIGHT OF THE  
13 INDICTMENT -- IN FACT, THERE WAS A PRELIMINARY HEARING TO FIND  
14 THE DEFENDANT WAS INVOLVED WITH THAT -- THAT THERE ISN'T ANY  
15 HISTORY OF VIOLENCE, AND SO NOTWITHSTANDING THE CRIMINAL  
16 HISTORY INVOLVING PETTY THEFT, YOU'D SAY THERE IS NO CLEAR AND  
17 CONVINCING EVIDENCE OF A DANGER TO THE COMMUNITY?

18 **MR. TAMBURELLO:** THAT'S CORRECT. THAT'S CORRECT.  
19 THAT'S WHAT I'M SAYING.

20 **THE COURT:** OKAY.

21 **MR. TAMBURELLO:** I MEAN, THERE ARE -- THERE ARE CASES  
22 WHERE THERE IS PROBABLE CAUSE, BUT THE MAGISTRATE UNDER THE  
23 BAIL REFORM ACT CAN FIND CONDITIONS THAT COULD SATISFY --

24 **THE COURT:** WELL, THERE'S ALWAYS PROBABLE CAUSE. I  
25 MEAN, WHENEVER WE HAVE AN INDICTMENT, WE ALWAYS HAVE PROBABLE

1 CAUSE.

2 MR. TAMBURELLO: RIGHT, EXACTLY.

3 THE COURT: I WAS JUST SAYING BECAUSE -- WE'RE  
4 TALKING A LOT ABOUT THE WEIGHT OF THE EVIDENCE, WHICH IS, OF  
5 COURSE, THE LEAST IMPORTANT FACTOR. BUT I -- BUT THAT'S WHY  
6 I'M TRYING TO GO FIGURE OUT. BUT I UNDERSTAND IT'S GOING TO  
7 WHETHER THERE'S A HISTORY OF VIOLENCE AND WHETHER THERE'S A  
8 DANGER.

9 MR. TAMBURELLO: RIGHT.

10 THE COURT: WHAT ABOUT THE RISK OF FLIGHT GIVEN THE  
11 SERIOUSNESS OF THE -- OF THE CHARGES? WELL, AND -- AND -- THE  
12 CONSEQUENCES REALLY IS --

13 MR. TAMBURELLO: WELL, THAT -- THAT HAPPENS IN EVERY  
14 CASE, BUT THEN YOU BALANCE THAT AGAINST WHO SHE IS AS A PERSON  
15 AND -- AND -- AND HER TIES TO THE COMMUNITY, HER -- HER  
16 FAMILY.

17 SHE'S BEEN HERE HER WHOLE LIFE. SHE'S NEVER -- SHE  
18 DOESN'T HAVE A PASSPORT. SHE'S NEVER TRAVELED OUT OF THE  
19 COUNTRY. SHE -- SHE HAS FOUR CHILDREN. SHE'S NOT GOING TO --  
20 TO RUN ANY PLACE. SHE COOPERATED WITH THE POLICE THE WHOLE  
21 TIME DURING THEIR INVESTIGATION. SHE DIDN'T RUN. SHE HAD NO  
22 REASON TO RUN.

23 THE COURT: YOU MEAN BETWEEN MAY AND JUNE COOPERATED  
24 WITH THE POLICE?

25 MR. TAMBURELLO: WELL, BETWEEN -- BETWEEN JUNE 4TH

1 AND HER TIME OF HER ARREST. YOU KNOW, AND IT'S -- AND IT'S  
2 SHE -- SHE REALLY HAS AN INCREDIBLE SUPPORT SYSTEM, NOT ONLY  
3 WITH FAMILY BUT OF FRIENDS. AND -- AND THEY'RE ALL HERE TO --  
4 TO HELP AND TO SUPPORT AND -- AND ALSO TO PROVIDE WHATEVER IS  
5 NECESSARY BY WAY OF -- OF TRYING TO PRESENT THE COURT WITH  
6 SOME CONDITIONS THAT WILL SATISFY THE COURT THAT SHE IS NOT  
7 GOING TO FLEE.

8 SHE NEVER ABUSED ALCOHOL. SHE DOESN'T EVEN DRINK ALCOHOL.  
9 SHE DOESN'T USE -- ABUSE DRUGS. I MEAN, HER HISTORY IS --  
10 IS -- IS SHE'S GOT A PROBLEM WITH THEFT. I'M GOING TO SAY IT.  
11 THAT'S TRUE. OKAY? BUT SHE DOESN'T HAVE VIOLENCE.

12 AND THE COURT MIGHT BE CONCERNED ABOUT THE -- THE BENCH  
13 WARRANTS THAT ARE OUTSTANDING. THOSE OCCURRED BECAUSE SHE WAS  
14 IN CUSTODY. I DON'T SEE THEM AS A PROBLEM WHATSOEVER.

15 **THE COURT:** WELL, THEY'RE A PROBLEM NOW. WHAT YOU'RE  
16 SAYING IS MAYBE THEY COULD BE --

17 **MR. TAMBURELLO:** EASILY RESOLVED.

18 (SIMULTANEOUS COLLOQUY.)

19 **THE COURT:** -- BUT THEY HAVE NOT YET.

20 **MR. TAMBURELLO:** RIGHT. EASILY RESOLVED IS MY  
21 OPINION. SO I THINK THE -- I THINK THE COURT, I THINK,  
22 UNDERSTANDS THAT -- THAT -- WHAT I'VE SAID AND -- AND HAS  
23 PROPERLY PUT IT IN PERSPECTIVE SO I'M GOING -- I'M GOING TO  
24 LEAVE IT AT THAT AT THIS POINT.

25 **THE COURT:** ALL RIGHT. MR. FRENTZEN?

1           **MR. FRENTZEN:** YOUR HONOR, I'M HAPPY TO GO ON FOR A  
2           REALLY LONG TIME. I DON'T KNOW IF THE COURT HAS SPECIFIC  
3           AREAS THAT IT WANTS ME TO ADDRESS. I -- I CAN JUST --

4                               (SIMULTANEOUS COLLOQUY.)

5           **THE COURT:** WELL, WHATEVER YOU THINK'S IMPORTANT.

6           **MR. FRENTZEN:** THAT'S FINE, YOUR HONOR. THEN I'LL  
7           COVER THE BASIS. THE FIRST ISSUE I THINK THE COURT HAS  
8           CORRECTLY POINTED OUT IS, YOU KNOW, WHAT ARE WE GOING TO DO  
9           WITH MER- -- MS. MERCADO IF, IN FACT, SHE WERE RELEASED, WHICH  
10          OF COURSE WE THINK WOULD BE A BAD DECISION, AND WE'RE GOING TO  
11          GET INTO THAT, BUT THERE ARE WARRANTS CURRENTLY FROM  
12          SANTA CLARA COUNTY AND FROM SAN MATEO COUNTY.

13          I KNOW THAT NEITHER OF THOSE ENTITIES ARE INTERESTED IN  
14          DROPPING THOSE WARRANTS. I KNOW ALREADY THAT IN SAN MATEO,  
15          THE PROBATION OFFICER HAS NOT -- THIS WAS NOT ISSUED BECAUSE  
16          SHE NO SHOWED BECAUSE SHE WAS IN CUSTODY. THIS ISSUED BECAUSE  
17          THEY BELIEVE SHE HAD VIOLATED THE TERMS OF HER PROBATION, AND  
18          THE RECOMMENDATION FROM THE PROBATION OFFICE IS THAT SHE BE  
19          SENTENCED TO CDCR TO SERVE PRISON TIME ON THE PROBATION THAT  
20          SHE'S CURRENTLY ON.

21          SO WHAT ARE WE GOING TO DO? ARE WE GOING TO RELEASE HER  
22          SO THAT SHE CAN GO OFF TO PRISON AND THE MARSHALS HAVE TO GO  
23          PICK HER UP EVERY TIME WE HAVE A COURT APPEARANCE? THAT --

24          **THE COURT:** JUST SO IT'S CLEAR, THAT -- THAT -- NOT  
25          GOING TO HAPPEN, RIGHT? I WOULDN'T RELEASE HER TILL THOSE

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1 WERE CLEARED UP. BUT THE QUESTION REALLY THAT I WANT TO GET  
2 IN TODAY IS I DON'T WANT TO THEN CONTINUE THIS MATTER TO HAVE  
3 MR. RAM (PHONETIC) CLEAR IT UP THEN -- ONLY FOR ME TO THEN  
4 SAY, OKAY, NO, I'M NOT GOING TO RELEASE HER ANYWAY. SO LET'S  
5 PUT THOSE ASIDE, BECAUSE I WOULDN'T RELEASE HER AS LONG AS  
6 THOSE WARRANTS WERE THERE, AND THAT WOULD BE A HURDLE.

7 BUT LET'S SAY DOWN THE LINE, THEN TALK -- AND PUT THOSE  
8 ASIDES, BECAUSE AS LONG AS THOSE THERE, YOU'RE RIGHT, SHE  
9 WOULDN'T BE RELEASED. BUT LET'S SAY DOWN THE LINE  
10 MR. TAMBURELLO WAS ABLE TO TAKE CARE OF THEM.

11 **MR. FRENTZEN:** WELL, I MEAN, TAKING CARE OF THEM  
12 MEANS THAT SOMEHOW SOMEONE BUREAUCRATICALLY GETS BORED AND  
13 LETS THEM GO.

14 WHAT I'M TELLING THE COURT IS THAT BASED ON THE PROBATION  
15 OFFICER'S KNOWLEDGE OF MS. MERCADO AND HIS VIEWING OF THE  
16 VIOLATION -- AND I KNOW THIS IS A JUST A PROBATION OFFICER,  
17 AND THEY HAVEN'T HAD A HEARING OR ANYTHING, BUT HIS VIEW IS  
18 SHE NEEDS TO GO SERVE SOME PRISON TIME. SO THAT CLEARLY, I  
19 THINK, PUTS THIS IN A CERTAIN LIGHT.

20 AND I UNDERSTAND SANTA CLARA -- THIS WAS NOT A -- YOU  
21 KNOW, YOU MISSED YOUR COURT APPEARANCE. WHERE ARE YOU? WE  
22 DON'T CARE IF YOU'RE IN JAIL. WE'RE GOING TO ISSUE A WARRANT.  
23 THIS WAS YOU VIOLATED YOUR PROBATION. WE -- WE WANT YOU TO DO  
24 SOME TIME ON IT. THAT'S MY UNDERSTANDING OF WHAT WE'RE  
25 LOOKING AT. AND THAT'S BECAUSE OF WHO MS. MERCADO IS.

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1           **THE COURT:** NO, I GUESS -- I GUESS WHAT I'M SAYING --  
2 I GUESS WHAT I'M SAYING IS I DON'T WANT TO SAY, OKAY, I'M  
3 DETAINING MS. MERCADO BECAUSE OF THOSE WARRANTS, ONLY THEN AND  
4 HAVE MR. TAMBURELLO GO SPEND TIME AND HOURS TRYING TO DO  
5 SOMETHING WITH IT WHEN IT'S NOT GOING TO MAKE ANY DIFFERENCE,  
6 I GUESS WHAT I'M SAYING, SO LET'S SORT OF CUT TO THAT.

7           **MR. FRENTZEN:** TOTALLY UNDERSTOOD.

8 I'M JUST STARTING OUT WITH THAT TO PUT -- TO PUT -- TO  
9 FOCUS THE COURT'S ATTENTION ON THAT. AND I'LL START WHERE I  
10 GUESS MR. TAMBURELLO LED (SIC) OFF WITH AT SORT OF THE END IN  
11 TERMS OF -- NO, YOU KNOW WHAT I'LL GET RIGHT IT.

12 LET'S GET INTO THE EVIDENCE ONLY BECAUSE SOME OF MY  
13 COMMENTS WITH RESPECT TO MS. MERCADO'S BACKGROUND AND SOME OF  
14 THE ISSUES THAT MR. TAMBURELLO HAS RAISED SORT OF RELATE TO  
15 THAT.

16 SO MR. TAMBURELLO MADE A BIG DEAL OF MS. MERCADO'S STATUS  
17 AS A PARENT SOMEHOW ENTITLING HER TO RELEASE THAT -- WHEN WE  
18 WERE HERE THE LAST TIME. THIS CASE -- THE INCEPTION OF THIS  
19 CASE OCCURRED WHEN MS. MERCADO'S DAUGHTER LETICIA GILTON WENT  
20 DOWN TO LOS ANGELES TO LIVE WITH A RELATIVE OF MS. MERCADO AND  
21 MR. GILTON.

22 THAT WAS ANTONIO GILTON, WHO IS A MEMBER OF CDP, WHO, AS  
23 THE COURT MAY OR MAY NOT HAVE SEEN, AT HIS LAST APPEARANCE --  
24 I DON'T KNOW IF THE COURT SAW THE PRELIMINARY PRETRIAL  
25 SERVICES REPORT, BECAUSE WE WEREN'T ARGUING ABOUT DETENTION SO

1 THE COURT MAY HAVE HAD NO REASON TO SEE IT BUT IS LONG,  
2 LENGTHY CRIMINAL HISTORY FILLED WITH DRUG SALES AND FIREARM  
3 POSSESSIONS. SO THAT'S WHO MS. MERCADO AND MR. GILTON SAW FIT  
4 TO SEND THEIR DAUGHTER DOWN TO LIVE WITH.

5 NOW WHEN SHE WAS ASKED ABOUT THIS BY THE POLICE, SHE LIED  
6 AND SAID SHE WAS SENDING HER DAUGHTER TO LIVE WITH AMBER  
7 HERNANDEZ, MR. GILTON'S EITHER WIFE OR COMMONLAW LIVE-IN  
8 SPOUSE. I'M SORRY, I JUST -- I CAN'T RECALL AT THIS  
9 PARTICULAR MOMENT HOW EVERYBODY'S RELATED, AND LEFT OUT THE  
10 PART THAT ANTONIO GILTON WAS IN THE HOME, A -- A GANG MEMBER.

11 SO SHE SENDS HER -- HER DAUGHTER DOWN TO LIVE THERE, AND  
12 SHE THEN ALSO BELIEVES THAT IT'S A GOOD IDEA TO LET HER MINOR  
13 DAUGHTER WORK IN AN ESTABLISHMENT CALLED HAPPY DAYS. NOW,  
14 HAPPY DAYS IS A MARIJUANA DISPENSARY IN THE LOS ANGELES AREA,  
15 BASICALLY GROUND ZERO FOR HOOVER CRIPPS. IT IS ALSO OWNED OR  
16 PARTLY OWNED AND RUN BY AN INDIVIDUAL WHO IS A FORMER  
17 SAN FRANCISCO ASSOCIATE OF CDP, AN INDIVIDUAL BY THE NAME OF  
18 JEFF HUNTER.

19 JEFF HUNTER OWNED A MARIJUANA DISPENSARY CALLED HAPPY DAYS  
20 UP IN SAN FRANCISCO BEFORE HE WENT DOWN TO LOS ANGELES, AND  
21 MS. MERCADO AND BARRY GILTON DECIDED IT'S A GOOD IDEA TO HAVE  
22 THEIR MINOR DAUGHTER GO DOWN TO LOS ANGELES, LIVE WITH A KNOWN  
23 CDP GANG MEMBER, ANTONIO GILTON, AND WORK WITH AN ASSOCIATE OF  
24 CDP, JEFF HUNTER, AS A MINOR IN A MARIJUANA DISPENSARY, WHICH  
25 ACCORDING TO SOURCE REPORTING IS ALSO A CENTER FOR

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1 PROSTITUTION.

2 THAT'S THE KIND OF PARENTING THAT WE'RE TALKING ABOUT  
3 HERE. SO MS. GILTON, OF COURSE, ENDS UP -- AND I'M TALKING  
4 ABOUT LETICIA GILTON ENDS UP IN A BAD SITUATION WITH CALVIN  
5 SNEED, IS OUR BELIEF AND UNDERSTANDING THAT THE EVIDENCE WOULD  
6 BEAR OUT.

7 ON MAY 25TH, LUPE MERCADO DOES GO TO LOS ANGELES. ON THE  
8 EARLY MORNING OF MAY 27TH -- AND I'M SORRY THIS IS LAST  
9 YEAR -- OF 2012, BARRY GILTON FLIES DOWN. THIS IS AFTER A  
10 NUMBER OF TELEPHONE CONVERSATIONS BETWEEN MS. MERCADO AND  
11 BARRY GILTON. HE FLIES DOWN TO LOS ANGELES. THEY -- THERE --  
12 THEIR TELEPHONE COMMUNICATIONS STOP BETWEEN EACH OTHER  
13 RIGHT -- RIGHT AFTER THE TIME THAT MR. GILTON LANDS AT LAX  
14 AFTER FLYING OUT OF SFO, THUS TENDING TO INDICATE THAT FROM  
15 THAT POINT ON, THEY ARE TOGETHER.

16 FROM THAT POINT ON, THEY ARE BOTH CALLING A NUMBER OF  
17 DIFFERENT INDIVIDUALS TO INCLUDE THE HAPPY DAYS DISPENSARY AND  
18 OTHER INDIVIDUALS -- EXCUSE ME -- IN -- DOWN IN THE  
19 LOS ANGELES AREA AND SO ON.

20 LATE ON MAY 27TH, CALVIN SNEED IS SHOT OUTSIDE OF THE  
21 HAPPY DAYS DISPENSARY. IT IS WITHIN A COUPLE HOURS AFTER THAT  
22 SHOOTING THAT BARRY GILTON AND LUPE MERCADO, ACCORDING TO  
23 THEIR PHONE RECORDS, JETTED OUT OF LOS ANGELES AND DRIVE ALL  
24 NIGHT TO GET TO SAN FRANCISCO BY THE FOLLOWING MORNING WHERE  
25 THEY ARE THEN BOTH IN BACK UP IN SAN FRANCISCO, THEIR WORK IN

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1 LOS ANGELES DONE.

2 NOW, MR. TAMBURELLO IS CORRECT IN TERMS OF EYEWITNESSES TO  
3 THE SHOOTING DOWN IN LOS ANGELES. I WILL HAPPILY CONCEDE  
4 THAT. BUT THEY BOTH GO DOWN TO L.A. -- WELL, I'M SORRY. LUPE  
5 MERCADO GOES DOWN TO L.A. SHE CAN'T GET DONE WHAT SHE NEEDS  
6 TO GET DONE. SHE AND BARRY ARE TALKING. BARRY FLIES DOWN.  
7 CALVIN SNEED GETS SHOT UP, AND WITHIN A FEW HOURS, THEY'RE  
8 DRIVING BACK TO SAN FRANCISCO, MISSION ACCOMPLISHED.

9 NOW WHAT'S ALSO SIGNIFICANT ABOUT THIS IS I, LIKE  
10 MR. TAMBURELLO, TALKED ABOUT HOW MS. MERCADO COOPERATED WITH  
11 THE POLICE. SHE CLEARLY TOLD THEM CERTAIN THINGS. WELL, WHAT  
12 HE'S LEFT OUT -- AND I'LL GET TO MORE OF THIS AT THE END -- IS  
13 SHE LIES TO THE POLICE ABOUT A NUMBER OF THINGS, AND -- AND  
14 THAT'S -- YOU KNOW, HE MADE A BIG DEAL WITH ACCESSORY AFTER  
15 THE FACT.

16 WELL, WE, OF COURSE, CHARGE ALL THE CRIMES THAT WE'RE ABLE  
17 TO SEE AND CHARGE. AND WHEN SOMEONE NOT ONLY PARTICIPATES IN  
18 THE CRIME BUT LATER ON TRIES TO COVER IT UP, NOT JUST FOR  
19 THEMSELVES, BUT ALSO FOR OTHERS, WE CHARGE ACCESSORY AFTER THE  
20 FACT.

21 SO MS. MERCADO, WHEN SHE'S INTERVIEWED BY THE POLICE ABOUT  
22 THIS, DENIES THAT BARRY GILTON GOES DOWN TO THE L.A. WITH HER.  
23 THAT IS SIGNIFICANT. SHE DENIES THAT BARRY GILTON IS IN L.A.  
24 AT THE TIME THAT CALVIN SNEED IS SHOT, WHICH IS, OF COURSE,  
25 SIGNIFICANT BECAUSE IF THEY'RE JUST DOWN THERE LOOKING FOR

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1 THEIR DAUGHTER, THEN WHY WOULDN'T YOU TELL THE POLICE HE CAME  
2 DOWN THERE TO HELP ME LOOK FOR THE DAUGHTER. SHE DOESN'T TELL  
3 HIM THAT BECAUSE SHE DOESN'T WANT THE POLICE TO KNOW THAT  
4 BARRY GILTON IS DOWN THERE AT THE SAME TIME THAT CALVIN SNEED  
5 GETS SHOT AT.

6 AND I DON'T KNOW IF I SAID "SHOT" BEFORE. THE BULLETS  
7 DON'T HIT HIM. THEY HIT THE CAR, AND HE GETS INJURED BY THE  
8 GLASS.

9 SO ON JUNE 3RD, WE FAST-FORWARD. CALVIN SNEED BRINGS  
10 LETICIA GILTON UP TO SAN FRANCISCO AND BETWEEN THE LATE NIGHT  
11 OF JUNE 4TH AND THE EARLY MORNING IS WHEN THE MURDER OCCURS.  
12 I WON'T GET -- INTO, YOU KNOW, ALL OF THE EVIDENCE, BUT WHAT I  
13 CAN TELL THE COURT IS THERE IS -- WITH RESPECT TO MS. MERCADO,  
14 THERE IS A MASSIVE AMOUNT OF TELEPHONIC COMMUNICATIONS BETWEEN  
15 HERSELF AND, WHEN HE LEAVES THE HOME, BARRY GILTON AROUND THE  
16 TIME LEADING UP TO THE MURDER.

17 NOW, ACCORDING TO WITNESSES, THERE IS -- THEY GET BACK  
18 FROM VISITING THEIR GRANDMOTHER TO A RESIDENCE WHICH I THINK  
19 MAY BE THE SISTER'S RESIDENCE -- ONE OF THE PLACES I KNOW WAS  
20 MENTIONED IN THE PRETRIAL SERVICES WHICH IS THIS 35 JENNINGS  
21 STREET, WHICH IS WHERE THEY WERE STAYING AT THE TIME THAT THE  
22 MURDER OCCURRED.

23 AND THERE IS BASICALLY A FIGHT BETWEEN LETICIA GILTON AND  
24 THE PARENTS BECAUSE LETICIA GILTON WANTS TO LEAVE WITH CALVIN  
25 SNEED AND GO BACK DOWN TO LOS ANGELES, AND THEY DON'T WANT HER

1 TO.

2 AS A RESULT, THEY DON'T CALL THE POLICE AND SAY, HEY,  
3 THERE'S A GUY -- THE GUY THAT -- YOU KNOW, THAT -- THAT LUPE  
4 MERCADO HAD PREVIOUSLY REPORTED IN JUNE IS UP HERE AND HE'S  
5 COMING TO GET OUR DAUGHTER AND, YOU KNOW, WE WANT YOU TO DO  
6 SOMETHING ABOUT IT. SHE'S A MINOR, COME AND TAKE CARE OF  
7 THIS, COME HELP US.

8 INSTEAD, THEY CALL WHO THEY WANT TO TAKE CARE OF THE  
9 SITUATION. THEY BUNGLED IT IN LOS ANGELES, AND SO THEY CALL  
10 OTHER MEMBERS OF CDP TO INCLUDE THE LEADER ALFONSO WILLIAMS  
11 AND ANTONIO GILTON, WHO I'D PREVIOUSLY TALKED ABOUT, WAS THE  
12 INDIVIDUAL -- ONE OF THE TWO INDIVIDUALS THAT THEY THOUGHT WAS  
13 A GOOD IDEA TO SEND LETICIA TO LIVE WITH IN LOS ANGELES.

14 SO BARRY GILTON LEAVES THE RESIDENCE AFTER TELLING LETICIA  
15 BASICALLY IF YOU THINK YOU'RE GROWN, THEN, YOU KNOW, TURN THE  
16 LIGHT OFF WHEN YOU LEAVE. BASICALLY, YOU KNOW, LAY SOME BAIT,  
17 GO GET THE GUY TO COME PICK YOU UP WHO WE WANT TO TAKE CARE  
18 OF.

19 BARRY GILTON -- AGAIN, RATHER THAN CALLING THE POLICE,  
20 BARRY GILTON LEAVES THE RESIDENCE, AND ACCORDING -- BETWEEN  
21 PHONE RECORDS AND VIDEO OUTSIDE OF 1458 GROVE STREET, WHICH IS  
22 SORT OF THE HEADQUARTERS OF CDP IF YOU WILL AND ALSO A  
23 RESIDENCE ATTACHED TO ALFONSO WILLIAMS, BARRY GILTON MEETS  
24 WITH ALFONSO WILLIAMS AND ANTONIO GILTON.

25 THEY GET A GUN OUT OF ONE VEHICLE, AND THEY GET INTO

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1 ANTONIO GILTON'S VEHICLE, A SILVER SUV WITH ROOF RACK. THEY  
2 THEN, ACCORDING TO PHONE RECORDS, TRAVEL BACK TO THE AREA OF  
3 THE RESIDENCE.

4 AT 1:57 A.M. THERE'S A CALL FROM LUPE MERCADO TO BARRY  
5 GILTON AND BY 2:02 A.M., CALVIN SNEED HAS PULLED UP NEAR THE  
6 RESIDENCE. LETICIA GILTON TRIES TO WARN HIM TO GET OUT OF  
7 THERE BECAUSE SHE KNOWS SOMETHING IS -- BAD IS ABOUT TO  
8 HAPPEN. AND A SILVER SUV WITH A ROOF RACK PULLS UP NEXT TO  
9 CALVIN SNEED'S VEHICLE AND SHOTS ARE FIRED.

10 THERE'S FOUR SHELL CASING (SIC), FOUR EXPENDED 40-ROUND --  
11 .40 CALIBER SHELL CASINGS AT THE SCENE IN THE ROAD. THERE'S  
12 ALSO AN UNFIRED FULL 9-MILLIMETER ROUND, TENDING TO INDICATE  
13 TWO SHOOTERS BUT ONE OF THEM HAD PROBLEMS WITH THEIR FIREARM.

14 THAT VEHICLE RACES OFF. THERE'S VIDEO OF THE VEHICLE  
15 AROUND THE CORNER. AND THEN SURE ENOUGH, BACK AT 1458 GROVE,  
16 BETWEEN PHONE RECORDS AND THE VIDEO, THEY -- THE THREE MEN GO  
17 THERE AND THEY THEN DISPERSE. BARRY GILTON GOES BACK HOME.

18 ON THE SCENE, LETICIA GILTON HAS RUN UP TO THE CAR AND,  
19 ACCORDING TO WITNESSES THERE, SHE'S FREAKING OUT, AND SHE'S  
20 YELLING, "THEY DIDN'T HAVE TO DO HIM LIKE THAT."

21 BARRY GILTON IS INTERVIEWED AT HIS HOME, AND HE LIES  
22 ABOUT -- BY SAYING THAT HE DIDN'T GO OUT THAT NIGHT, A CLEAR  
23 LIE. AT THE STATION, THE PARENTS GO TO THE STATION, LUPE  
24 MERCADO AND BARRY GILTON. AND FOR UNDERSTANDABLE REASONS,  
25 LETICIA GILTON IS NOT COMFORTED BY THEIR APPEARANCE. SHE

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1 SCREAMS AT THEM AND TELLS THEM TO GET OUT.

2 BARRY GILTON LATER IS INTERVIEWED AND DENIES THAT HE WENT  
3 OUT THAT NIGHT, THAT HE -- AFTER THEY'D GOTTEN BACK HOME, HE  
4 HAD STAYED IN, CLEAR LIE TO HIDE THE FACT THAT HE AND THE  
5 MEMBERS OF CDP HAD KILLED CALVIN SNEED.

6 AND BARRY GILTON ALSO DENIES HAVING GONE DOWN TO L.A. WHEN  
7 CALVIN SNEED WAS SHOT IN MAY. WHY IS -- ALONG WITH LUPE  
8 MERCADO LYING ABOUT IT, WHY IS BARRY GILTON LYING ABOUT IT?  
9 WELL, HE'S LYING ABOUT IT BECAUSE WHEN THEY WERE DOWN IN L.A.,  
10 THEY WERE UP TO NO GOOD.

11 LUPE MERCADO LIES IN A -- IN A NUMBER OF RESPECTS, AS I'VE  
12 ALREADY TALKED ABOUT, ABOUT BARRY GILTON NOT GOING TO L.A.  
13 AROUND THE TIME OF THE CALVIN SNEED SHOOTING. SHE ALSO LIES  
14 ABOUT WHO SHE SENT LETICIA GILTON TO LIVE WITH BY LEAVING  
15 ANTONIO GILTON SORT OF OUT OF THE PICTURE BY CLAIMING HE  
16 DIDN'T LIVE IN -- HE WASN'T STAYING THERE THEN.

17 SHE DIDN'T SEND HIM (SIC) TO STAY WITH ANTONIO GILTON  
18 BECAUSE HE'S A GANG BANGER AND ALSO HAD JUST BEEN PARTICIPATED  
19 IN THIS MURDER OF A RATHER -- IT WAS JUST AMBER SHE WAS GOING  
20 TO STAY WITH. AND SHE ALSO DENIES THAT SHE -- SHE SAYS SHE  
21 COULDN'T REMEMBER WHAT HAD HAPPENED THE NIGHT THAT CALVIN  
22 SNEED GOT KILLED AND WHERE SHE WAS AND WHAT WAS GOING ON.

23 SO THAT'S KIND OF THE -- THE BASIC OUTLINE. I'M NOT EVEN  
24 GOING TO GET INTO ANY PARTICULAR SOURCE REPORTING, AND I'M NOT  
25 GOING TO THROW ANY NAMES OUT THERE. I -- I CAN GET INTO THAT

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1 IF THE COURT THINKS THAT IT'S IMPORTANT OR NECESSARY, BUT I  
2 DON'T THINK WE EVEN -- FOR NOW, WE'LL ROLL WITHOUT IT, AND --  
3 AND I THINK THE COURT KNOWS WHAT I'M -- WHAT I'M TALKING  
4 ABOUT.

5 SO WHAT WE HAVE HERE IS BASICALLY AND -- AND I -- I -- I  
6 DON'T WANT TO GET PERSONAL, BUT YOU HAVE HORRENDOUS PARENTING  
7 IN THE OUTSET OF THIS SITUATION, SO THE NOTION THAT, YOU KNOW,  
8 CHILDREN NEED TO BE SENT TO LIVE WITH DANGEROUS INDIVIDUALS  
9 AND THEN GET PARENTAL PERMISSION TO ILLEGALLY DISPENSE  
10 NARCOTICS, THAT THAT -- THAT'S THE KIND OF PARENTING THAT SHE  
11 NEEDS TO BE LOOSE TO CONTINUE TO DO, I THINK IS EXTREMELY  
12 PROBLEMATIC FROM MS. MERCADO'S STANDPOINT.

13 EXCUSE ME.

14 THERE WAS A LOT OF TALK LAST TIME AND THERE'S TALK AGAIN  
15 BY MR. TAMBURELLO ABOUT THE COURT'S ORDER IN THE -- FOLLOWING  
16 THE PRELIM. I MEAN, WE'RE TALKING ABOUT A SITUATION HERE  
17 WHERE NOT ONLY HAS A GRAND JURY FOUND PROBABLE CAUSE BUT A  
18 COURT -- A SEPARATE COURT HAS INDEPENDENTLY FOUND PROBABLE  
19 CAUSE.

20 MR. TAMBURELLO LAST TIME CHARACTERIZED IT AS ALL KINDS OF  
21 DANCING. I DON'T KNOW WHAT KIND OF DANCING HE'S TALKING  
22 ABOUT. I'VE SEEN SOME DANCING -- AND I COULD PASS THIS UP TO  
23 THE COURT IF THE COURT WANTS. THIS IS THE COURT'S ORDER. IT  
24 IS -- IT IS STRAIGHTFORWARD. AND IT -- WITHOUT COMMENTARY ONE  
25 WAY OR THE OTHER, OTHER THAN TO SAY, HEY, MY JOB HERE IS

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1 PROBABLE CAUSE; I'M FINDING PROBABLE CAUSE FROM THE PRELIM.

2 I WENT BACK TO LOOK IT UP AFTER MR. TAMBURELLO  
3 CHARACTERIZED IT AS DANCING. IF THE COURT WANTS IT, I CAN  
4 HAND IT UP --

5 **THE COURT:** I DON'T THINK I NEED IT. I THINK IT'S --

6 **MR. FRENTZEN:** THERE'S NO DANCING.

7 **THE COURT:** -- IT'S STIPULATED THAT PROBABLE CAUSE  
8 WAS FOUND. THE JUDGE MAY HAVE SAID WHAT HE SAID, AND THERE  
9 WAS EVIDENCE AND -- YOU KNOW, IT SOUNDS LIKE IT'S A -- YOU  
10 KNOW, A TRIABLE CASE. BUT PROBABLE CAUSE WAS FOUND.

11 THERE'S -- AN INDICTMENT WAS ISSUED; THERE'S PROBABLE  
12 CAUSE.

13 **MR. FRENTZEN:** MY -- MY ONLY POINT, YOUR HONOR,  
14 WAS -- WAS I THINK IF THE COURT WERE TO TAKE A LOOK AT IT, I  
15 DON'T CHARACTERIZE THIS AS ANY KIND OF DANCING WHATSOEVER.  
16 IT'S -- IT'S NOT THE JUDGE --

17 THE -- THE OTHER THING OBVIOUSLY THAT I'LL TURN TO, WHICH  
18 I THINK MR. TAMBURELLO HAS SORT OF THE SKIRTED AROUND IS  
19 OBVIOUSLY MS. MERCADO'S RECORD. NOW, YOU KNOW, WHAT WE HAVE  
20 HERE IS -- AND I DON'T KNOW. BASED ON THE WAY IT PLAYS OUT IN  
21 WHAT'S IN FRONT OF THE COURT IN PRETRIAL SERVICES REPORT,  
22 THERE ARE OBVIOUSLY INDICATIONS OF PROBATION BEING VIOLATED  
23 AND REVOCATIONS, BUT I -- I COUNT A LOT MORE THAN WHAT'S  
24 ACTUALLY RECORDED HERE.

25 IN OTHER WORDS, I DON'T KNOW THAT MS. MERCADO MORE THAN

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1 ONCE OR TWICE HAS SUCCESSFULLY COMPLETED PROBATION. SHE'S  
2 PERPETUALLY GETTING ARRESTED AND GETTING CONVICTED. I WILL --  
3 YOU KNOW, WHAT -- WHAT MR. TAMBURELLO CHARACTERIZES AS  
4 "SHOPLIFTING," SOME OF IT'S SHOPLIFTING, YOUR HONOR. SOME OF  
5 IT'S STRAIGHT UP EMBEZZLEMENT. AND I CAN TELL THE COURT THAT  
6 AT HER TIME AT MACY'S, THAT WAS EMPLOYEE EMBEZZLEMENT THAT WAS  
7 A LITTLE MORE SOPHISTICATED THAN WALKING IN AND WALKING OUT  
8 WITH SOMETHING THAT DOESN'T BELONG TO YOU.

9 WE'RE TALKING ABOUT BEING CAUGHT AFTER SHE WAS SUSPECTED  
10 OF DOING THIS KIND OF THING AND BECAUSE OF A LOT OF ACTIVITY  
11 ON A PARTICULAR MACY'S CARD ON -- AND THIS IS ON MARCH 2ND OF  
12 2006, EMBEZZLEMENT AND GRAND THEFT BY EMPLOYEE, THIS ACTUALLY  
13 INVOLVED A SCHEME BY WHICH INDIVIDUALS WOULD COME IN AND SHE  
14 WOULD OVER-RETURN -- SHE WOULD DO MULTIPLE RETURNS ON A CREDIT  
15 CARD SO THAT THE CREDIT CARD COULD THEN BE USED WITH EXTRA  
16 CREDIT.

17 THIS WAS, ACCORDING TO THE PEOPLE AT MACY'S AND THE POLICE  
18 REPORT, DONE WITH MULTIPLE ASSOCIATES. AND ACCORDING TO ONE  
19 OF THE INDIVIDUALS WHO WORKED AT THE STORE INVOLVING  
20 MS. MERCADO'S -- AS IT WAS PUT HERE, MS. MERCADO'S CURRENT  
21 BOYFRIEND.

22 WELL, I DON'T HAVE IN THE REPORT HERE YET THAT NAILED DOWN  
23 SINCE BASED ON THE PRETRIAL SERVICES, SHE'S BEEN WITH BARRY  
24 GILTON SOME 20 YEARS. I'M ASSUMING THAT IN SOME WAY, THIS  
25 INVOLVED BARRY GILTON. AGAIN, WE WILL HAVE EVIDENCE OF

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1 MR. GILTON BEING A LONG-TIME SORT OF OG CDP MEMBER.

2 I CAN ALSO TELL THE COURT THAT WITH RESPECT TO THAT  
3 BATTERY, THAT WAS, IN FACT, LUPE MERCADO THAT WE'VE GOT HERE  
4 IN COURT. I KNOW THAT BECAUSE --

5 **THE COURT:** THE BATTERY IN MAY 2009?

6 **MR. FRENTZEN:** CORRECT, YOUR HONOR. THAT INVOLVED  
7 AND I WILL QUICKLY AND -- AND CONCEDE TO THE COURT WHAT  
8 HAPPENED THERE IS POLICE BASICALLY, I THINK, GOT FRUSTRATED  
9 HEARING TWO SIDES ONCE THEY SHOWED UP ON SCENE, SO THEY ENDED  
10 UP CITING EVERYBODY INVOLVED, WHICH, AS I THINK THE COURT  
11 KNOWS, THOSE CASES DON'T MOVE FORWARD VERY OFTEN WHEN THE  
12 POLICE JUST GET TIRED AND THEY CITE EVERYBODY.

13 AND THE THING KIND OF GOES BECAUSE BOTH SIDES ARE MAKING  
14 COMPLAINTS AGAINST EACH OTHER BY THE END OF IT. BUT WHAT I  
15 WILL TELL THE COURT IS TROUBLING IS THAT IT'S NOT MS. MERCADO  
16 AND THE FOLKS WITH HER WHO CONTACT THE POLICE IN THAT  
17 INCIDENT. IT'S ACTUALLY THE OTHER SIDE WHO -- WHO BRINGS THE  
18 POLICE, IS MY UNDERSTANDING OF THE SITUATION.

19 AND THE INITIAL COMPLAINT IS THAT MS. MERCADO BUMPED INTO  
20 HER NEIGHBOR WHILE THEY WERE WALKING IN A HALLWAY AND THEN RAN  
21 OVER TO THE NEIGHBOR WHEN THE NEIGHBOR WAS IN A CAR, GRABBED  
22 HER BY THE HAIR AND STARTED BEATING ON HER. OTHER FAMILY  
23 MEMBERS GET INVOLVED.

24 I CAN TELL THE COURT THAT LETICIA GILTON IS ONE OF THE  
25 INDIVIDUALS WHO COMES OVER AND STARTS -- YOU KNOW, JUMPS INTO

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1 THIS FIGHT. SO HERE WE HAVE MOM, YOU KNOW, LEADING DAUGHTER  
2 ON TO A -- YOU KNOW, BASICALLY FISTICUFFS IN THE PARKING LOT.

3 AND THE OTHER TROUBLING PART IS THERE'S AN INDIVIDUAL BY  
4 THE NAME OF VICTOR JONES, WHO IS A CDP MEMBER, WHO SHOWS UP  
5 AND, AT LEAST ACCORDING TO THE VICTIM, MR. JONES IS SORT OF  
6 TRYING TO BREAK UP THE FIGHT. BUT HE BASICALLY GOES TO THE --  
7 TO THE VICTIM OF MS. MERCADO'S BATTERY AND SAYS, IF YOU DON'T  
8 GET OUT OF HERE, YOU'RE GOING TO GET KILLED. AND THAT'S  
9 BECAUSE MS. MERCADO IS SORT OF ASSOCIATED OR CLICKED UP WITH  
10 THE FOLKS SHE'S CLICKED UP WITH.

11 SO THAT'S THE -- THAT'S THE BATTERY.

12 AND BY MY COUNT, SHE'S INCAPABLE, ALMOST INCAPABLE OF  
13 FOLLOWING PROBATION BECAUSE SHE JUST CONTINUES TO PERPETUALLY  
14 VIOLATE. MOST OF THE VIOLATIONS ARE JUST BY GOING OUT AND  
15 COMMITTING NEW CRIMES.

16 AND IT'S A LITTLE MORE SERIOUS THAN SHOP LIFTING. AND  
17 ALSO POINT OUT -- I MEAN, SHE'S A -- THESE ARE NOT JUST  
18 MISDEMEANORS. THERE ARE FELONY CONVICTIONS IN HERE. I THINK  
19 THREE. SHE'S A THREE-TIME FELON.

20 WHATEVER, YOU KNOW, WE THINK OF THE UNDERLYING CRIME, THE  
21 STATE OF CALIFORNIA THINKS ENOUGH TO HAVE HER BE A THREE-TIME  
22 FELON WITHOUT GOING AHEAD AND COUNTING MISDEMEANORS. SO THIS  
23 IS NO -- THIS IS NO SMALL RECORD, AND IT'S CERTAINLY HABITUAL.

24 **THE COURT:** I THINK IT'S FOUR, ACTUALLY.

25 **MR. FRENTZEN:** FOUR FELONIES? THANK YOU, YOUR HONOR,

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1 I MISSED ONE.

2 SO THE -- THE ONLY OTHER ISSUE I WANT TO BRING UP, YOUR  
3 HONOR, IS JUST WITH RESPECT TO SORT OF THE -- THE OVERALL  
4 FLAVOR OF THIS CASE AND THAT'S THIS: THE -- THE INDIVIDUALS  
5 THAT MS. MERCADO ASSOCIATES WITH THAT HER HUSBAND IS A MEMBER  
6 OF, YOU KNOW, WE'RE FAMILIAR WITH A NUMBER OF THEM. AND THERE  
7 ARE A NUMBER OF THEM WHO ARE PIMPS. ALMOST MOST OF THEM ARE  
8 PROBABLY PIMPS.

9 AND THERE ARE A DISTINCT NUMBER WHERE, THROUGH PRIOR  
10 CONVICTIONS AND/OR CURRENT CHARGES, WE KNOW THEY PIMP OUT  
11 MINORS. THIS IS NOT A SITUATION WHERE WHAT WAS GOING TO  
12 MS. -- WITH MS. GILTON, WHICH WAS CLEARLY A TRAGEDY, OFFENDED  
13 THEIR MORAL FIBER.

14 THEIR FRIENDS -- THEIR BEST FRIENDS AND ASSOCIATES DO THE  
15 SAME THING TO MAKE MONEY ON A DAILY BASIS AND TO FEED THE  
16 ENTERPRISE. THAT'S WHAT THEY'RE ABOUT. THIS WAS YOU CAN'T DO  
17 IT TO OUR PEOPLE. WE CAN DO IT TO YOURS, BUT YOU CAN'T DO IT  
18 TO OURS. THAT'S WHAT THIS WAS ABOUT.

19 AND WITH RESPECT TO THAT ENTERPRISE, I'LL JUST TELL THE  
20 COURT, THERE IS A HISTORY OF OBSTRUCTION THAT INCLUDES -- AND  
21 I WILL POINT OUT MS. MERCADO'S LIES TO THE POLICE ON HER OWN  
22 BEHALF BUT AS WELL, YOU HAVE THIS SITUATION WITH THIS  
23 INDIVIDUAL VICTOR JONES, AT LEAST ACCORDING TO THAT PARTICULAR  
24 VICTIM, THREATENING TO KILL ON BEHALF OF LUPE MERCADO.

25 YOU HAVE A SITUATION THAT HAPPENED AT 850 BRYANT THAT THE

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1 COURT MAY OR MAY NOT HAVE HEARD ABOUT SOME YEARS AGO IN A  
2 MURDER CASE OF AN INDIVIDUAL CHARLES HEARD, WHO I UNDERSTAND  
3 MS. MERCADO KNOWS FAIRLY WELL. HE WAS EVENTUALLY CONVICTED OF  
4 MURDER. BUT DURING THE COURSE OF IT, A WITNESS WAS BROUGHT  
5 IN, AND DURING THE COURSE OF ONE OF THOSE HEARINGS, THERE WAS  
6 A DISPLAY WHERE EVERYBODY STOOD UP IN THE COURTROOM,  
7 EVERYBODY -- A BUNCH OF MEMBERS OF CDP IN ORDER TO TRY TO  
8 INTIMIDATE THE WITNESS WHO WAS ON STAND. SOME INDIVIDUALS  
9 WERE EITHER CHARGED OR HAD THEIR PROBATION VIOLATED AS A  
10 RESULT OF THAT.

11 AND THERE WAS ALSO A DEFENSE INVESTIGATOR GOT IN SOME  
12 TROUBLE, SOME OBSTRUCTION STUFF. THAT ALSO WAS A CDP CASE SO  
13 THAT THE COURT'S AWARE OF THE KINDS OF THINGS THAT THE  
14 GOVERNMENT IS AFRAID OF IN THIS PARTICULAR CASE PEOPLE DOING  
15 ON THE OUTSIDE.

16 AND FINALLY, I'LL JUST SAY CLEARLY, YOU KNOW, MS. --  
17 MS. MERCADO DOESN'T HAVE A PROBLEM GETTING THESE GUYS TO ACT  
18 ON HER BEHALF. AND ALL OF THAT WE THINK, GIVEN THE  
19 PRESUMPTION, MAKES THIS A CASE WHERE DETENTION IS THE ONLY  
20 APPROPRIATE SITUATION.

21 **THE COURT:** CAN I -- CAN I ASK YOU THE --

22 **MR. FRENTZEN:** SURE.

23 **THE COURT:** -- THE PROPOSED -- OR THE -- THAT THE  
24 DEFENDANT-PROFERRED CUSTODIAN, I GUESS, HER MOTHER, WHAT --  
25 HER SISTER LIVES ON JENNINGS. AT THE TIME OF ALL THIS, WHAT

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1 HAPPENED? WAS MS. MERCADO LIVING AT JENNINGS WITH HER AT THAT  
2 TIME?

3 **MR. FRENTZEN:** CORRECT.

4 **THE COURT:** OKAY.

5 **MR. FRENTZEN:** SO I MEAN, THAT OBVIOUSLY IS A  
6 PROBLEM. I MEAN, I CAN GO THROUGH THIS ROUTINE. I -- YOU  
7 KNOW, THE COURT'S FAMILIAR WITH IT. BUT THESE ARE THE SAME  
8 PEOPLE WHO HAVE BEEN IN HER LIFE AS SHE'S REPEATEDLY CONTINUED  
9 TO REOFFEND, IGNORE HER PROBATION, ET CETERA. AND SO EITHER  
10 THEY'RE INEFFECTIVE IN CONTROLLING HER, OR SHE JUST DOESN'T  
11 CARE ENOUGH TO LISTEN TO THEM.

12 YOU KNOW, THERE'S NO REASON TO THINK THAT ALL OF A SUDDEN  
13 YOU KNOW IT'S A BRAND NEW WORLD AND, YOU KNOW, SHE'S GOING TO  
14 START LISTENING TO PEOPLE WHO I'M SURE HAVE ALL THE BEST  
15 INTENTIONS IN THE WORLD.

16 **THE COURT:** ALL RIGHT.

17 MR. TAMBURELLO?

18 **MR. TAMBURELLO:** YEAH, CUSTODIAN WOULD BE THE MOTHER  
19 BECAUSE WE DO -- WE'RE SENSITIVE TO THE 35 JENNINGS PLACE, AND  
20 I THINK THAT'S CORRECT, SO --

21 **THE COURT:** BUT THE -- BUT MS. MERCADO'S CHILDREN  
22 LIVE WITH HER SISTER.

23 **MR. TAMBURELLO:** AT 35 JENNINGS.

24 **THE COURT:** RIGHT. AND -- AND THE MOTHER LIVES --

25 **MR. TAMBURELLO:** IN VALLEJO.

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1           **THE COURT:**   IN VALLEJO.   SO YOU'RE ACTUALLY NOT  
2   PROPOSING THAT SHE BE LIVING WITH HER CHILDREN.

3           **MR. TAMBURELLO:**   WELL, THE QUESTION IS THIS:   RIGHT  
4   NOW SHE'S NOT LIVING WITH HER CHILDREN.   RIGHT NOW SHE DOESN'T  
5   HAVE AN OPPORTUNITY TO SEE HER CHILDREN.   RIGHT NOW SHE  
6   DOESN'T HAVE AN OPPORTUNITY TO TAKE HER CHILDREN TO SCHOOL.  
7   THE QUESTION OF LIVING WITH HER CHILDREN IS WHETHER OR NOT SHE  
8   HAS ACCESS TO BE WITH THEM, YOU KNOW, DURING THE HOLIDAYS,  
9   ET CETERA.

10          SHE -- SHE DOESN'T HAVE TO BE AT 35 JENNINGS TO BE WITH  
11   THEM.   SHE DESPERATELY WANTS TO BE WITH HER CHILDREN.  
12   THERE -- THERE HAS -- THERE'S BEEN A LOT OF THINGS SAID AND A  
13   LOT OF IT IS -- THE INTIMIDATION IN THE COURTROOM WITH CHARLES  
14   HEARD.   MS. MERCADO WASN'T THERE.   SHE HAS (SIC) NOTHING ABOUT  
15   THAT.   SHE HAS NOT A CLUE.   EVEN HER HUSBAND WASN'T THERE.

16          THIS -- THERE IS NO EVIDENCE THAT SHE IS A GANG MEMBER.  
17   SHE -- SHE KNOWS PEOPLE, SO IF YOU KNOW SOMEBODY, ACCORDING TO  
18   MR. FRENTZEN --

19          **THE COURT:**   WELL, IS -- IS BARRY GILTON A GANG  
20   MEMBER?

21          **MR. TAMBURELLO:**   NO, NOT AT ALL.   HE IS NOT A GANG  
22   MEMBER.

23          **THE COURT:**   SHE JUST -- AND ANTONIO GILTON?

24          **MR. TAMBURELLO:**   THAT, I DON'T KNOW.   I DON'T KNOW  
25   ANYTHING ABOUT HIM.   BUT LET ME SAY THIS ABOUT ANTONIO GILTON

1 AND AMBER HERNANDEZ. LETICIA WENT TO LIVE WITH AMBER  
2 HERNANDEZ AND HER CHILDREN. I'M AWARE THAT AMBER HERNANDEZ  
3 HAS A SPECIAL RELATIONSHIP WITH ANTONIO GILTON. SHE HAD  
4 CHILDREN, TWO BEAUTIFUL TWINS AND ALL OF THAT, BUT HE'S NOT  
5 THERE --

6 **THE COURT:** BUT HE'S --

7 **MR. TAMBURELLO:** -- ON A REGULAR BASIS.

8 **THE COURT:** YOU SAID SHE WENT TO LIVE WITH AMBER AND  
9 HER CHILDREN, BUT THE PARENTS -- THE FATHER OF THE CHILDREN IS  
10 ANTONIO GILTON?

11 **MR. TAMBURELLO:** THAT'S CORRECT. THAT'S CORRECT.

12 AND -- WHAT WE'RE DOING HERE IS MR. FRENTZEN IS DOING A --  
13 SHE'S A BAD PARENT.

14 **THE COURT:** I DON'T -- I'M NOT GOING TO MAKE ANY  
15 JUDGMENT ABOUT WHETHER --

16 (SIMULTANEOUS COLLOQUY.)

17 **MR. TAMBURELLO:** -- YOUR HONOR, IT'S COMPLETELY  
18 SPOILING EVERYTHING. IT'S -- IT SEEPS IN IN EVERY WAY. IT'S  
19 A JUDGMENT CALL.

20 LETICIA GILTON -- LETICIA GILTON HAD PROBLEMS. SHE DID,  
21 AND SHE WAS HAVING DIFFICULTIES. AND THEY -- SHE WANTED TO  
22 LEAVE AND GO TO LOS ANGELES. AMBER GIL- -- AMBER HERNANDEZ  
23 WAS THE ONE PERSON THAT THEY KNEW THAT WAS THERE WHO OFFERED  
24 TO HAVE HER LIVE WITH HER.

25 I -- MR. FRENTZEN KNOWS THIS FAMILY DOESN'T HAVE A LOT OF

1 MONEY. AND SO THEY CAN'T SIMPLY SAY, OH, OKAY, GO AHEAD. YOU  
2 KNOW, WE'LL GET YOU A LITTLE STUDIO IN BEL AIR. I MEAN,  
3 THAT'S NOT THE CASE.

4 **THE COURT:** BUT, MR. TAMBURELLO, THIS IS THE REAL  
5 CONCERN, IS IF YOU LOOK AT THE RECORD, IS THAT MS. MERCADO  
6 SEEMS UNWILLING OR UNABLE TO COMPLY WITH WHEN SHE IS PUT UNDER  
7 CONDITIONS. SO, FOR EXAMPLE, WE HAVE A HISTORY HERE WHERE SHE  
8 WAS REPEATEDLY PLACED ON PROBATION IN LIEU OF JAIL TIME AND  
9 REPEATEDLY VIOLATED THAT PROBATION, THE MOST RECENT BEING JUST  
10 MAY OF 2012 BEFORE THIS -- WHERE SHE WAS GIVEN JAIL TIME.

11 SO WHAT IS THERE THAT SUGGESTS IF SHE RELEASED THAT  
12 SUDDENLY SHE WOULD BE ABLE TO COMPLY WITH THE CONDITIONS OF  
13 RELEASE WHEN SHE HADN'T BEEN ABLE TO DO SO BEFORE ALTHOUGH,  
14 ADMITTEDLY THEY WERE FOR NON-VIOLENT CRIMES.

15 **MR. TAMBURELLO:** ALL RIGHT. LET ME -- LET ME ADDRESS  
16 THAT. THE SAN JOSE CASE. SAN JOSE CASE WAS SHE DIDN'T  
17 VIOLATE CONDITIONS OF PROBATION AS MR. FRENTZEN SAYS IN A  
18 WAY -- AND, OF COURSE, IT'S INTERESTING. WHEN -- WHEN YOU  
19 HAVE A U.S. ATTORNEY CALLING UP AND ASKING FOR A PROBATION  
20 OFFICER, YOU HAVE LAW ENFORCEMENT TO LAW ENFORCEMENT.

21 HER VIOLATION WAS SHE FAILED TO PUT IN THE NUMBER OF HOURS  
22 FOR HER COMMUNITY SERVICE. THE REASON SHE FAILED TO DO THAT  
23 IS BECAUSE THE PROOF OF THAT WAS TAKEN DURING THE SEARCH AND  
24 HER ARREST. SHE COMPLETED THE HOURS. THAT'S ALL SHE NEEDED  
25 TO DO, AND SHE WOULD HAVE BEEN IN FULL COMPLIANCE.

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1 THE ONE IN SAN MATEO, WAS SHE WAS IN CUSTODY AND DIDN'T  
2 REPORT TO THE COURTS. THAT WAS THE PROBLEM. SO THOSE TWO  
3 THINGS -- THAT'S WHY I SAY I'M -- I'M FEELING A LOT BETTER  
4 ABOUT BEING ABLE TO RESOLVE THOSE MATTERS.

5 YOU KNOW, I -- I DON'T HAVE THE -- THE KIND OF AUTHORITY  
6 THAT AN AUSA HAS WITH PROBATION, BUT I THINK I CAN RESOLVE IT.

7 NONETHELESS, THE BATTERY THAT WAS SO WELL PUT FORTH, THAT  
8 BATTERY WAS ONLY A DETENTION -- AND MATTER OF FACT,  
9 MS. MERCADO SUED THE PEOPLE IN SMALL CLAIMS COURT, GOT A  
10 JUDGMENT, AND THE PEOPLE WERE ELIMINATED FROM THAT APARTMENT  
11 BECAUSE THEY WERE FOUND TO BE AT FAULT. NOT MS. MERCADO.

12 THAT'S THE BACK STORY ON THAT.

13 WITH RESPECT -- WITH RESPECT TO THE EMBEZZLEMENT, IT WAS A  
14 MISDEMEANOR. IT WASN'T THIS LONG, HIGH-FALUTING MAJOR FELONY  
15 THAT MR. FRENTZEN'S TALKING ABOUT. SHE DOES HAVE A PROBLEM.  
16 I -- I CLEARLY SAY THAT.

17 WHAT THE -- WHAT'S THE CLEAR AND CONVINCING EVIDENCE THAT  
18 SHE'S A DANGER IF RELEASED? I -- I HAVEN'T HEARD IT YET.  
19 SHE'S NOT A DANGER. SHE'S NEVER BEEN A DANGER. WHY IS SHE  
20 ALL OF A SUDDEN A DANGER? IS IT BECAUSE OF THE CHARGES? OR  
21 IS IT BECAUSE SHE IS CLAIMED TO HAVE BEEN ASSOCIATED WITH  
22 CERTAIN PEOPLE? I DON'T THINK THAT RISES TO THE LEVEL OF  
23 CLEAR-AND-CONVINCING EVIDENCE. I -- I DON'T -- I DON'T SEE  
24 THAT MS. MERCADO HAS PRESENTED IN HER LIFETIME DANGER.

25 THE BATTERY, THE BATTERY IS BOGUS. SO THERE'S -- THERE'S

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1 NO VIOLENCE. THE PROBATION SHE HAS HAD A NUMBER OF ARRESTS  
2 FOR THAT. WE'LL CONCEDE THAT BECAUSE IT'S REAL. SHE'S GOT A  
3 PROBLEM.

4 BUT DOES THAT MEAN THAT SHE CANNOT FOLLOW THIS COURT'S  
5 ORDERS AND THE CONDITIONS? I DON'T THINK SO. I --

6 **THE COURT:** WELL, EXCEPT THAT SHE HASN'T IN THE PAST,  
7 RIGHT? SHE'S BEEN GIVEN OPPORTUNITIES. SHE'S BEEN PLACED ON  
8 PROBATION. EVEN WHEN FELONIES -- EVEN WITH REPEATED FELONIES  
9 AND THEN VIOLATED THOSE CONDITIONS.

10 **MR. TAMBURELLO:** WELL, I SUGGEST THAT THE COURT CAN  
11 FASHION SOME CONDITIONS, A CUSTODIAN, ELECTRONIC MONITORING.  
12 THOSE ARE CONDITIONS THAT SHE'S NEVER HAD BEFORE.

13 AND -- AND I THINK THAT THEY WILL ACTUALLY HAVE A VERY  
14 IMPORTANT IMPACT, NOT TO MENTION SHE'S BEEN IN CUSTODY FOR A  
15 YEAR AND A HALF. I THINK SHE'S -- SHE GETS IT. IT'S THE  
16 LONGEST TIME SHE'S EVER BEEN IN CUSTODY.

17 AND -- AND -- AND I -- AND I HAVE TO SAY, THERE'S --  
18 THERE'S A LOT OF -- THERE'S A LOT OF GUILT BY ASSOCIATION IN  
19 ALL OF THIS, AND -- AND I CAN'T BEGIN TO TELL YOU THE TRAGEDY  
20 OF LETICIA GETTING INVOLVED IN THE SITUATION HAS -- HAS REALLY  
21 CAUSED HER TO BE VERY UPSET ABOUT HER DAUGHTER. THIS WAS --  
22 THIS WAS PORTRAYED IN STATE COURT AS A PERSONAL MATTER.  
23 THAT'S THE WAY THEY PORTRAYED IT.

24 AND MR. FRENTZEN HAS NOW ALL OF A SUDDEN TURNED IT INTO A  
25 GANG CASE, AND THAT'S BECAUSE THEY HAVE DISCOVERED THE VIDEO

1 THAT MR. FRENTZEN TALKED ABOUT. AND ALL OF A SUDDEN, IT'S  
2 BECOME A GANG CASE. MS. MERCADO KNEW NOTHING ABOUT THAT  
3 VIDEO. MS. MERCADO HAD NOTHING TO DO WITH THAT.

4 SHE -- SHE MADE A PHONE CALL AT 1:57. THAT'S BASICALLY  
5 WHERE SHE'S ASKING HER HUSBAND'S WHEREABOUTS 'CAUSE SHE  
6 THOUGHT HE WAS HOME. WHY IS IT THAT IT HAS TO BE A SINISTER  
7 CRIMINAL MOTIVE? THAT'S WHAT MR. FRENTZEN HAS PROFERRED THAT  
8 THAT PARTICULAR PHONE CALL IS HER AIDING AND ABETTING.

9 IT WAS BAIT TO TURN THE LIGHT OFF AND HAVE HIM COME, AND  
10 THEN MS. -- MS. MERCADO MAKES THE PHONE CALL. THAT'S HIS  
11 WHOLE THEORY. IT'S NO RECORDING OF THE PHONE CALL. WE DON'T  
12 KNOW THE CONTENTS OF IT. PROSECUTION HAS NO IDEA WHAT THE  
13 CONTENTS ARE.

14 WHY DOES IT HAVE TO BE INFERRED AS A CIRCUMSTANTIAL PIECE  
15 OF EVIDENCE THAT IT IS CRIMINAL IN NATURE? YOU KNOW, THE  
16 PRESUMPTION OF INNOCENCE DOES COME IN HERE WHEN YOU HAVE  
17 CIRCUMSTANTIAL EVIDENCE. AND WHEN YOU HAVE CIRCUMSTANTIAL  
18 EVIDENCE LIKE A 1:57 PHONE CALL, IF THE INTERPRETATION AND  
19 INFERENCES CAN BE INNOCENT OR CRIMINAL, IT'S REALLY -- THE  
20 CONCEPT IS THAT YOU -- YOU LOOK AT IT FROM THE PERSPECTIVE OF  
21 THE PRESUMPTION OF INNOCENCE AND THAT IT IS NON-CRIMINAL IN  
22 NATURE, UNLESS IT'S CLEARLY SOMETHING THAT IS LIKE A RECORDING  
23 THAT SUPPORTS FRENTZEN'S STATEMENT.

24 **THE COURT:** WELL, I DON'T KNOW ABOUT THAT. I  
25 OFTEN -- JURIES ARE, OF COURSE, INSTRUCTED THAT DIRECT AND

1 CIRCUMSTANTIAL EVIDENCE ARE TO BE GIVEN EQUAL WEIGHT. AND  
2 SOME PEOPLE WOULD SAY CIRCUMSTANTIAL EVIDENCE IS ACTUALLY  
3 STRONGER BECAUSE DIRECT EVIDENCE, SUCH AS EYEWITNESS, IS OFTEN  
4 THE WEAKEST OR THE MOST PRONE, SO I DON'T KNOW THAT I AGREE  
5 WITH THAT. AND, AGAIN, WE'RE DEALING WITH A FINDING OF  
6 PROBABLE CAUSE TWICE HERE.

7 BUT, MR. FRENTZEN, LET ME ASK YOU THIS ABOUT WHAT'S THE  
8 PROFFER WITH RESPECT TO BARRY GILTON BEING A MEMBER OF THE  
9 GANG?

10 **MR. FRENTZEN:** WE HAVE SOURCE REPORTING ALONG WITH  
11 PHOTOGRAPHS, ALONG WITH CERTAIN VIDEOS, ALONG WITH -- WHEN I  
12 SAY "SOURCE REPORTING," I'M REFERRING IT -- TO IT IN THAT  
13 MANNER. NOW, THESE ARE TESTIFYING WITNESSES.

14 **THE COURT:** ALL RIGHT. AND --

15 **MR. TAMBURELLO:** COULD I SAY SOMETHING? VIDEOS OF  
16 HIM BEING IN A CERTAIN LOCATION? MR. BARRY GILTON -- AND  
17 MR. FRENTZEN KNOWS THIS -- PLAYS BASKETBALL AND AS -- AT ONE  
18 TIME WAS A STAR BASKETBALL PLAYER AND HAD AN OPPORTUNITY TO GO  
19 ON TO COLLEGE BECAUSE OF HIS ABILITIES IN THE BASKETBALL  
20 COURT.

21 AND THE CENTER -- 1458 GROVE STREET IS ALSO A CENTER FOR  
22 WHEN PEOPLE MEET AND THEY GO AND THEY PLAY GAMES. THAT'S --  
23 HIS ASSOCIATION IS THAT HE KNOWS THESE PEOPLE BUT NOT IN A  
24 SENSE OF BEING A GANG MEMBER, BUT, RATHER, THROUGH BASKETBALL  
25 AND HAS KNOWN THEM FOR A LONG TIME. IT'S -- IT'S A VERY

1 DIFFERENT SITUATION.

2 THE SOURCE -- THE SOURCE --

3 **MR. FRENTZEN:** YOUR HONOR, IF I CAN JUST RESPOND TO  
4 THAT? I'M SORRY. I THINK, THE COURT WAS DIRECTING THAT TO  
5 ME, AND IF MR. TAMBURELLO WANTS TO GO ON ABOUT THAT, I'LL JUST  
6 TELL THE COURT, VIDEO'S NOT ABOUT PLAYING BASKETBALL. IT'S  
7 ABOUT KILLING SNITCHES.

8 **MR. TAMBURELLO:** IS IT WITH BARRY GILTON THERE?

9 **MR. FRENTZEN:** YES, SIR.

10 **MR. TAMBURELLO:** WELL --

11 (OFF-THE-RECORD DISCUSSION.)

12 **THE COURT:** ALL RIGHT. ANYTHING FURTHER?

13 **MR. FRENTZEN:** NO, YOUR HONOR. THANK YOU.

14 **THE COURT:** ANYTHING FURTHER, MR. TAMBURELLO?

15 ALL RIGHT. ALL RIGHT. WELL, I APPRECIATE THE ARGUMENTS  
16 OF -- COUNSEL HAS MADE, AND MS. MERCADO AND -- AND TO BE  
17 HONEST, ANY TIME YOU HAVE A SITUATION WITH A DEFENDANT WHO,  
18 YOU KNOW, HAS MINOR CHILDREN AT HOME, I TAKE THIS MOTION VERY  
19 SERIOUSLY.

20 BUT BASED ON WHAT'S BEEN PROFERRED, I DO FIND THAT  
21 MS. MERCADO, THE GOVERNMENT HAS SHOWN THAT THERE'S A  
22 PREPONDERANCE IN (SIC) THE EVIDENCE THAT SHE'S A RISK OF  
23 NON-APPEARANCE. AND THAT IS BASED IN LARGE PART ON HER  
24 RECORD, AND THAT SHE'S -- SOMETIMES YOU HAVE, SOMETIMES YOU  
25 DON'T.

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1           HERE, WE HAVE A DEMONSTRATION OF EITHER AN INABILITY OR AN  
2           UNWILLINGNESS TO COMPLY WITH THE ORDERS OF THE COURT. AND  
3           WHILE I (SIC) GRANTED, I'LL SAY THERE WASN'T A HISTORY OF  
4           VIOLENCE, THE -- THIS GOES WITH IN TERMS OF JUST APPEARANCE.

5           AND THE PROPOSED -- WHILE I'M SURE THAT HER MOTHER  
6           WOULD -- IS SINCERE AND GENUINE AND WOULD DO HER BEST, HER  
7           MOTHER'S BEEN HERE AND HASN'T BEEN ABLE TO -- SUCCESSFUL IN  
8           THAT SENSE. AND, OF COURSE, THE JENNINGS, WHERE HER CHILDREN  
9           ARE LIVING, AND HER SISTER HAS KINDLY AND LOVINGLY CARED FOR  
10          HER CHILDREN, THAT'S WHERE SHE WAS LIVING BEFORE WHEN ALL  
11          THESE PROBLEMS -- SO THAT'S NOT AN APPROPRIATE PLACE EITHER.

12          AND THERE ISN'T ANY VIABLE SURETY AVAILABLE AS AN  
13          ADDITIONAL -- AND GIVEN THE SERIOUSNESS OF THE CHARGE AND THE  
14          CONSEQUENCE, AND -- THE WEIGHT OF THE EVIDENCE IS LEAST. AND  
15          I AM NOT IN ANY POSITION WHATSOEVER TO MAKE ANY JUDGMENT AS TO  
16          WEIGHT OF THE EVIDENCE BASED ON WHAT'S HERE TODAY. I HAVEN'T  
17          HAD A PRELIMINARY HEARING, AND THAT'S NOT MY ROLE. AND I --  
18          TWO COURT WERE -- A GRAND JURY AND A COURT HAVE NOW FOUND  
19          PROBABLE CAUSE.

20          AND WITH RESPECT TO A DANGER TO THE COMMUNITY, IT IS A  
21          HIGHER STANDARD. IT'S CLEAR AND CONVINCING. AND I DO THINK  
22          WHAT THE GOVERNMENT HAS PROFERRED IS SUFFICIENT TO MEET THAT  
23          BURDEN HERE. ALTHOUGH IT'S DISPUTED, I UNDERSTAND THAT. I  
24          THINK GIVEN WHAT'S THERE THAT'S SUFFICIENT TO FIND THAT THE  
25          NATURE OF THE ALLEGATIONS WITH RESPECT TO -- ALTHOUGH

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1 MS. MERCADO'S NOT A MEMBER OF THE GANG, AND THAT HASN'T BEEN  
2 PROFERRED, ASSOCIATED WITH IT AND THE NATURE AND THE EVIDENCE  
3 AS TO WHAT WAS SAID AND HAPPENED IN LOS ANGELES.

4 SO I'M GOING TO REMAND MS. MERCADO TO THE CUSTODY OF THE  
5 U.S. MARSHALS, AND I'LL WRITE SOMETHING.

6 ALL RIGHT.

7 **MR. FRENTZEN:** THANK YOU, YOUR HONOR.

8 **THE COURT:** THANK YOU.

9 COULD YOU SUBMIT A PROPOSED ORDER?

10 **MR. FRENTZEN:** I WILL, YOUR HONOR. I'LL RUN IT BY  
11 MR. TAMBURELLO --

12 **THE COURT:** OKAY.

13 **MR. FRENTZEN:** -- AND I'LL SUBMIT IT TO THE COURT.  
14 THANK YOU.

15 **THE COURT:** THANK YOU VERY MUCH.

16 **MR. TAMBURELLO:** ALL RIGHT.

17 (PROCEEDINGS WERE CONCLUDED AT 10:29 A.M.)

18 --000--

CERTIFICATE OF TRANSCRIPTION OF ELECTRONIC RECORDING

I, RAYNEE H. MERCADO, HEREBY CERTIFY THAT THE  
FOREGOING IS A TRUE AND CORRECT TRANSCRIPTION TO THE BEST OF  
MY ABILITY, OF THE ABOVE PAGES, OF THE OFFICIAL ELECTRONIC  
SOUND RECORDING PROVIDED TO ME BY THE U.S. DISTRICT COURT,  
NORTHERN DISTRICT OF CALIFORNIA, OF THE PROCEEDINGS TAKEN ON  
THE DATE AND TIME PREVIOUSLY STATED IN THE ABOVE MATTER.

A handwritten signature in black ink, reading "Raynee H. Mercado", is written over a horizontal line.

RAYNEE H. MERCADO

TUESDAY, MARCH 25, 2014

**RAYNEE H. MERCADO (510) 502-6175**